

Article - Natural Resources

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§8–738.

(a) Subject to subsection (g) of this section, a person may not operate or attempt to operate a vessel while the person:

(1) Is under the influence of alcohol;

(2) Is impaired by alcohol;

(3) Is so far impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol that the person cannot operate a vessel safely; or

(4) Is impaired by any controlled dangerous substance, as defined in § 5–101 of the Criminal Law Article, unless the person is entitled to use the controlled dangerous substance under the laws of the State.

(b) (1) Except as provided under paragraph (2) of this subsection, the evidentiary presumptions and procedures established under §§ 10–302 through 10–309 of the Courts Article are applicable to any violation of this section.

(2) If at the time of testing an individual has an alcohol concentration that meets the definition of “under the influence of alcohol per se” in § 11–174.1 of the Transportation Article, as determined by an analysis of the individual’s blood or breath, it shall be prima facie evidence that the individual was operating a vessel while under the influence of alcohol.

(3) Any person who operates or attempts to operate a vessel on the waters of the State is deemed to have consented, subject to §§ 10–302 through 10–309 of the Courts Article, to take a test, as defined in § 16–205.1 of the Transportation Article, if the person is detained by a police officer who has reasonable grounds to believe that the person has been operating or attempting to operate a vessel while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not operate the vessel safely, or while impaired by a controlled dangerous substance.

(c) (1) Except as provided in § 8–738.1 of this subtitle, a person may not be compelled to take a test, as defined in § 16–205.1 of the Transportation Article.

(2) The detaining police officer shall advise a person who is requested to take a test that, on receipt of a sworn statement from the officer that the person was requested to take a test and refused or was tested and the result indicated an alcohol concentration of 0.08 or more, the court may, on conviction and in addition to other penalties, prohibit the person from operating a vessel on the waters of the State for up to 1 year.

(d) It is not a defense to a charge of violating subsection (a)(3) of this section that the person charged is or was entitled under the laws of this State to use the drug, combination of drugs, or combination of one or more drugs and alcohol, unless the person was unaware that the drug or combination would make the person incapable of safely operating a vessel.

(e) (1) Notwithstanding any other provision of this title, a person who violates subsection (a)(1) of this section is guilty of a misdemeanor and upon conviction:

(i) For a first offense, shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year or both;

(ii) For a second offense, shall be subject to a fine of not more than \$2,000 or imprisonment for not more than 2 years or both; and

(iii) For a third or subsequent offense, shall be subject to a fine of not more than \$3,000 or imprisonment for not more than 3 years or both.

(2) Notwithstanding any other provision of this title, a person who violates subsection (a)(2), (3), or (4) of this section is guilty of a misdemeanor and upon conviction:

(i) For a first offense, shall be subject to a fine of not more than \$500 or imprisonment for not more than 2 months or both; and

(ii) For a second or subsequent offense, shall be subject to a fine of not more than \$1,000 or imprisonment of not more than 1 year or both.

(3) Notwithstanding any other provision of this title, the court may prohibit a person convicted of a violation of subsection (a)(1) of this section from operating a vessel on the waters of the State for up to 1 year if the person:

(i) Refused to take a test, as defined in § 16–205.1 of the Transportation Article, when requested by a police officer under subsection (b)(3) of this section; or

(ii) Was tested and the result indicated an alcohol concentration of 0.08 or more.

(f) If a person is charged with a violation of this section, the court may find the person guilty of any lesser included offense under any subsection of this section.

(g) This section applies to the following:

(1) A vessel required to be registered with the Department under this subtitle;

(2) A vessel required to have a valid number awarded in accordance with a federal law or a federally approved numbering system of another state; and

(3) A vessel from a foreign country using the waters of this State.

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